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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,801	07/17/2003	Josef Appel	028811-29	8996
22204	7590	12/22/2004	EXAMINER	
NIXON PEABODY, LLP 401 9TH STREET, NW SUITE 900 WASHINGTON, DC 20004-2128			LIEU, JULIE BICHNGOC	
			ART UNIT	PAPER NUMBER
			2636	

DATE MAILED: 12/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,801

Applicant(s)

APPEL ET AL.

Examiner

Julie Lieu

Art Unit

2636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 9, 10 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/17/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 7, and 11-14 are rejected under 35 U.S.C. 102(e) as being anticipated by Losey et al. (US Patent No. 6,573,678).

Claim 1:

Losey discloses a process for displacing a movable part of motor vehicle between at least two positions by means of a drive (motor drive), comprising the steps of:

- a. checking a monitoring area at least one of outside and inside the motor vehicle for the presence at least one perturbing object without contact between the movable part and the perturbing object, and
- b. turning off or reversing the drive when a perturbing object is detected within the monitoring area,

Art Unit: 2636

- c. wherein the movable part is at least one of a vehicle window, an openable motor vehicle roof, an antenna, a convertible top and a part thereof.

See brief summary of invention and col. 4, lines 39-49.

Claim 2:

The monitoring area includes at least of the following component are

- a vehicle side area,
- a rear vehicle area,
- a front vehicle area, and
- a top area of the vehicle.

Claim 3:

The checking step is performed by means of at least one of at least distance sensor (limit switches), at least motion sensor and at least one motion direction sensor.

Claim 7:

It would also have been obvious to one skilled in the art, in the checking step in the modified Losey system, to use at least one of a sensor and a camera located in at least one an outside mirror, a bumper, taillights, headlights, turn signals, mudguards, a shelf, a roof strip, a tailgate and a door of the vehicle.

Claim 11:

Losey discloses a device for displacing a movable motor vehicle part between at least two positions, comprising:

- a. a drive which displaces the movable vehicle part, and
- b. a control means for:

Art Unit: 2636

- i. checking a monitoring area at least one of outside and inside the motor vehicle for the presence at least one perturbing object without contact between the movable part and the perturbing object, and
- ii. one of turning off and reversing the drive when a perturbing object is detected within the monitoring area; wherein the movable part is at least one of a vehicle window, an openable motor vehicle, roof, an antenna, a convertible top and a part thereof.

See brief summary of invention and col. 4, lines 39-49.

Claim 12:

The checking step is performed by means of at least one of at least distance sensor (limit switches), at least motion sensor and at least one motion direction sensor.

Claim 13:

The system in Losey has a processing unit means to processing data signals of the at least one sensor or camera for detecting the perturbing object.

Claim 14:

It would also have been obvious to one skilled in the art, in the checking step in the modified Losey system, to use at least one of a sensor and a camera located in at least one an outside mirror, a bumper, taillights, headlights, turn signals, mudguards, a shelf, a roof strip, a tailgate and a door of the vehicle.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 4-6, 8, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Losey et al. (US Patent No. 6,573,678).

Claims 4-5:

The reference fails to disclose the checking step is performed by means of at least one of radar, ultrasound, camera, and laser scanning sensors. However, the use of these sensors for different purposes is conventional in the art. Thus, it would have been obvious to one skilled in the art to use one of these types of sensors in the Losey system because they are conventional obstacle detectors to detect the presence of an obstacle to p

Art Unit: 2636

Claim 6:

It would have been obvious to one skilled in the art to use the data recorded by the at least one camera in the modified system of Losey for determining the presence a perturbing object within the monitoring areas.

Claim 8:

The reference fails to disclose the use of a warning signal to be delivered when a perturbing object is detected within the monitoring area. However, the use of a warning to warn of a dangerous situation is conventional in the art. Thus, it would have been obvious to one skilled in the art to add a warning either optical or acoustics or a combination of both in the system of Losey because would prevent a person from being hurt by being between the moving parts of the vehicle.

Claim 15:

The reference fails to disclose the use of a warning signal to be delivered when a perturbing object is detected within the monitoring area. However, the use of a warning to warn of a dangerous situation is conventional in the art. Thus, it would have been obvious to one skilled in the art to add a warning either optical or acoustics or a combination of both in the system of Losey because would prevent a person from being hurt by being between the moving parts of the vehicle.

Art Unit: 2636

Allowable Subject Matter

5. Claims 9, 10, and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julie Lieu whose telephone number is 571-272-2978. The examiner can normally be reached on Mon-Fri 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Hofsass can be reached on 571-272-2981. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julie Lieu
Primary Examiner
Art Unit 2636

Dec. 08, 04